

UNITED STATES OF AMERICA 95 FERC ¶ 61,027
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Commonwealth Edison Company

Docket Nos. ER01-1028-000 and
ER01-1028-001

ORDER ACCEPTING FOR FILING
TRANSMISSION SERVICE AGREEMENTS
AND DENYING REQUEST TO WITHDRAW AGREEMENT

(Issued April 9, 2001)

In this order, we accept for filing four long-term firm point-to-point transmission service agreements (PECO Energy Agreements) filed by Commonwealth Edison Company (Commonwealth Edison) with PECO Energy Company (PECO Energy) and a long-term firm point-to-point transmission service agreement (Dynergy Agreement) with Dynergy Power Marketing, Inc. (Dynergy) (Docket No. ER01-1028-000); and deny a request by Commonwealth Edison to withdraw the Dynergy Agreement (Docket No. ER01-1028-001), as discussed further below.

Background

On October 25, 2000, Dynergy submitted a request to Commonwealth Edison for 102 MW of firm transmission service from January 1, 2001 to January 1, 2002. Dynergy listed the point of receipt as Commonwealth Edison and the point of delivery as Illinois Power Company (Illinois Power). This request was accepted by Commonwealth Edison on December 1, 2000 and confirmed by Dynergy on December 14, 2000. On December 19, 2000, Dynergy submitted a request to Commonwealth Edison to change the delivery point ("redirect") specified in the Dynergy Agreement on a firm basis for the month of January 2001, and to return to the original delivery point for the remaining 11 months of the agreement. Commonwealth Edison treated the request as a new request for service for one month pursuant to Section 22.2 of its Open Access Transmission Tariff (OATT). Dynergy's request to redirect was accepted by Commonwealth Edison on December 20, 2000 and confirmed by Dynergy on December 21, 2000.

On January 22, 2001, Commonwealth Edison submitted for filing the Dynegy Agreement and the four PECO Energy Agreements¹ (January 22, 2001 filing).

On February 9, 2001, Commonwealth Edison filed an amendment (Amended Filing) to its January 22, 2001 filing to withdraw the Dynegy Agreement because, according to Commonwealth Edison, when Dynegy switched delivery points it turned a long-term firm agreement into two short-term firm agreements.²

Notice of Filing and Protest

Notice of Commonwealth Edison's January 22, 2001 filing was published in the Federal Register, 66 Fed. Reg. 8584 (2001), with comments, protests, and interventions due on or before February 12, 2001.

Notice of Commonwealth Edison's Amended Filing was published in the Federal Register, 66 Fed. Reg. 11,159 (2001), with comments, protests, and interventions due on or before March 2, 2001.

No comments, protests, or interventions were filed with respect to the January 22, 2001 filing. On March 2, 2001, Dynegy filed a timely motion to intervene and protest to Commonwealth Edison's Amended Filing, asserting that Commonwealth Edison violated its obligations under its OATT by seeking to withdraw the Dynegy Agreement and refusing to allow Dynegy to exercise its rollover rights under this agreement.

Dynegy contends that Commonwealth Edison's practice improperly abrogates a customer's long-term agreement and unfairly forces point-to-point transmission customers, like Dynegy, to choose between two fundamental rights under the pro forma tariff - the right to redirect on a firm basis pursuant to Section 22.2 or the rollover rights that are afforded customers under long-term firm agreements pursuant to Section 2.2.

¹Each of the PECO Energy Agreements is for a one-year term from January 1, 2001 to January 1, 2002, for 25 MW.

²According to Commonwealth Edison, these two transactions are properly conducted under the umbrella short-term firm transmission service agreement between Commonwealth Edison and Dynegy, which was accepted by the Commission in Docket No. ER00-3779-000 as First Revised Service Agreement No. 403 under FERC Electric Tariff, First Revised Volume No. 5.

Further, it asserts that Commonwealth Edison's practice is not consistent with its OATT or the Commission's pro forma tariff.

Dynegy requests that the Commission: (1) reject Commonwealth Edison's Amended Filing, and (2) find that Commonwealth Edison has violated its OATT and the Commission's pro forma tariff by abrogating rollover rights on redirected long-term reservations.

On March 16, 2001, Commonwealth Edison filed a motion for leave to file a response and a response to the protest filed on March 2, 2001 by Dynegy.

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motion to intervene and protest serves to make Dynegy a party to this proceeding. With respect to Commonwealth Edison's answer, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁴ generally prohibits an answer to a protest. We are not persuaded to allow the proposed answer, and accordingly reject Commonwealth Edison's answer.

January 22, 2001 filing

We will accept for filing, as designated in the Attachment, the four PECO Energy Agreements and the Dynegy Agreement to be effective January 1, 2001, as requested.⁵

Amended Filing

We find that Dynegy's request to change a delivery point on a firm basis for one month and then to revert to its original delivery point does not convert its existing long-term firm transmission service agreement into two separate short-term transmission

³18 C.F.R. § 385.214 (2000).

⁴18 C.F.R. § 385.213(a)(2) (2000).

⁵See Prior Notice and Filing Requirements under Part II of the Federal Power Act, 64 FERC ¶ 61,139, order on reh'g, 65 FERC ¶ 61,081 (1993).

service agreements. Section 22.2 of the pro forma tariff was intended to provide flexibility to transmission customers to permit them to react in a competitive market. Some amount of this flexibility would be lost if, as Commonwealth Edison would have it, a long-term firm transmission customer seeking to modify its delivery points for a period of time would be converted to short-term firm transmission service and would lose the benefits (e.g., rollover rights) of its long-term firm service agreement. This flexibility, of course, is not unlimited. Any request by Dynegy to change a delivery point is treated as a new request for service for purposes of the availability of capacity.⁶ It does not transform the service from a long-term firm service to a short-term firm service. Dynegy has bought and paid for one year of firm transmission service under the firm service agreement at issue in this proceeding. Thus, we disagree with Commonwealth Edison and conclude that Dynegy retains its long-term firm service agreement and the rights associated with such agreement when it changes delivery points pursuant to Section 22.2 of Commonwealth Edison's OATT.

The Commission orders:

(A) The four PECO Energy Agreements and the Dynegy Agreement are hereby accepted for filing to be effective January 1, 2001, as discussed in the body of this order.

(B) Commonwealth Edison's request to withdraw Dynegy's long-term firm point-to-point transmission service agreement is hereby denied, as discussed in the body of this order.

(C) Commonwealth Edison is hereby informed of the rate schedule designations set forth in the Attachment.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

⁶See Section 22.2 of the pro forma tariff.

Commonwealth Edison Company and
Commonwealth Edison Company of Indiana
Docket No. ER01-1028-000
Rate Schedule Designations
Effective Date: January1, 2001

<u>Designation</u>	<u>Description</u>
(1) Service Agreement No. 494 under FERC Electric Tariff, First Revised Volume No. 5	Firm Point-To-Point Transmission Service with Dynegy Power Marketing, Inc.
(2) Service Agreement No. 495 under FERC Electric Tariff, First Revised Volume No. 5	Firm Point-To-Point Transmission Service with PECO Energy Company
(3) Service Agreement No. 496 under FERC Electric Tariff, First Revised Volume No. 5	Firm Point-To-Point Transmission Service with PECO Energy Company
(4) Service Agreement No. 497 under FERC Electric Tariff, First Revised Volume No. 5	Firm Point-To-Point Transmission Service with PECO Energy Company
(5) Service Agreement No. 498 under FERC Electric Tariff, First Revised Volume No. 5	Firm Point-To-Point Transmission Service with PECO Energy Company
(6) Third Revised Sheet Nos. 163, 163A, 163E and 163F under FERC Electric Tariff, First Revised Volume No. 5 (Supersedes Second Revised Sheet Nos. 163, 163A, 163E and 163F under FERC Electric Tariff, First Revised Volume No. 5)	Revised Index of Customers

Commonwealth Edison Company and
Commonwealth Edison Company of Indiana
Docket No. ER01-1028-000
Rate Schedule Designations
Effective Date: January 1, 2001

<u>Designation</u>	<u>Description</u>
(7) Second Revised Sheet Nos. 163B, 163C, 163D, 163G and 163H under FERC Electric Tariff, First Revised Volume No. 5 (Supersedes First Revised Sheet Nos. 163B, 163C, 163D, 163G and 163H under FERC Electric Tariff, First Revised Volume No. 5)	Revised Index of Customers
(8) Eighth Revised Sheet No. 163I under FERC Electric Tariff, First Revised Volume No. 5 (Supersedes Seventh Revised Sheet No. 163I under FERC Electric Tariff, First Revised Volume No. 5)	Revised Index of Customers
(9) Fifth Revised Sheet No. 163J under FERC Electric Tariff, First Revised Volume No. 5 (Supersedes Fourth Revised Sheet No. 163J under FERC Electric Tariff, First Revised Volume No. 5)	Revised Index of Customers